

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

| | | |
|---|---|--------------------|
| MARLA YORK |) | |
| Claimant |) | |
| VS. |) | |
| |) | Docket No. 259,059 |
| MERCY HOSPITAL |) | |
| Respondent |) | |
| AND |) | |
| |) | |
| MERCY HEALTH SYSTEMS OF KANSAS, INC. |) | |
| Insurance Carrier |) | |

ORDER

Respondent and its insurance carrier appealed the December 11, 2002 Award entered by Administrative Law Judge Jon L. Frobish. The Board heard oral argument on June 10, 2003. Gary M. Peterson of Topeka, Kansas, was appointed Board Member Pro Tem to participate in this proceeding.

APPEARANCES

William L. Phalen of Pittsburg, Kansas, appeared for claimant. Leigh C. Hudson of Fort Scott, Kansas, appeared for respondent and its insurance carrier.

RECORD AND STIPULATIONS

The record considered by the Board and the parties' stipulations are listed in the Award.

ISSUES

This is a claim for a July 13, 2000 accident and resulting low back injury. In the December 11, 2002 Award, Judge Frobish determined that claimant sustained a 10 percent whole person functional impairment as a result of the July 13, 2000 accident. Accordingly, the Judge awarded claimant a 10 percent permanent partial general disability. The Judge, however, denied claimant's request for additional temporary total disability benefits.

Respondent and its insurance carrier contend Judge Frobish erred. They argue claimant failed to prove that she sustained either permanent injury or permanent impairment as a result of the July 13, 2000 accident. On the other hand, respondent and its insurance carrier contend claimant fully recovered from the July 13, 2000 accident but on July 27, 2000, claimant injured her back at home. Respondent and its insurance carrier argue it was the latter incident at home that caused her permanent injury and created the need for medical treatment. Accordingly, respondent and its insurance carrier request the Board to reverse the December 11, 2002 Award and deny claimant's request for permanent disability benefits. In the alternative, respondent and its insurance carrier request the Board to reduce the permanent partial general disability by averaging Dr. Jeffrey A. Greenberg's zero to five percent whole body functional impairment rating with Dr. Brian K. Ellefsen's 10 percent whole body functional impairment rating.

Conversely, claimant requests the Board to affirm the Judge's finding that she sustained a 10 percent permanent partial general disability. Additionally, claimant requests that she be awarded temporary total disability benefits for the period from July 20, 2000, through September 20, 2001.

The only issues before the Board in this claim are:

1. Did claimant sustain either permanent injury or permanent impairment in her July 13, 2000 accident?
2. If so, what is the nature and extent of claimant's injury and disability for purposes of determining her workers compensation award?
3. Is claimant entitled to receive temporary total disability benefits from July 20, 2000, to September 20, 2001?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After considering the entire record and the parties' arguments, the Board finds and concludes that claimant's request for disability benefits and medical benefits for services rendered after July 27, 2000, should be denied.

The parties have stipulated that claimant sustained a work-related accident on July 13, 2000, while working for respondent. But the evidence fails to prove that it is more probably true than not that the July 13, 2000 accident caused claimant either permanent injury or permanent impairment. Conversely, the evidence establishes that it is more probably true than not that any permanent injury or permanent impairment that claimant may now have was caused by a July 27, 2000 incident that occurred at home.

Claimant, who worked for respondent as a home health aid, fell on July 13, 2000, while she was flipping a mattress for one of respondent's patients. Claimant immediately reported the incident to her supervisor.

Claimant was scheduled to be off work the three days following the July 13, 2000 accident. On Monday, July 17, 2000, claimant returned to work and performed her regular job duties. Claimant continued to work for respondent through July 27, 2000, when she bent over at home and felt something snap in her low back. She had an acute onset of pain and could not straighten her back without her son's help. After spending two days in bed, claimant sought medical treatment at an emergency room. On July 31, 2000, claimant prepared an incident report in which she described the July 13, 2000 accident and how the symptoms from that incident had resolved.

I was turning a [mattress] over and the bed flip me & [mattress] on to floor. [T]hen after a few day *[sic]* the pain in my lower back went away. July 27. I was putting clothes in dryer and I felt some snap in my lower back. [T]he pain will not go away. I went to ER July 30, 2000.¹

This claim hinges on claimant's credibility as she now contends that her symptoms did not resolve following the July 13, 2000 incident and that she erred in describing her symptoms in the incident report. Claimant initially testified that she erred in preparing the July 31, 2000 incident report as she was in pain and that she does not do very well expressing herself in writing. But at a later hearing, claimant testified that she erred as she was in pain and that she was concerned for her job.

Claimant testified she worked following the July 13, 2000 accident with significant ongoing back and leg pain, which prompted claimant's supervisor to modify claimant's duties. But claimant's supervisor, Rhonda Howerter, disagrees with that rendition of the facts. According to Ms. Howerter, claimant advised that her back was okay following the July 13, 2000 accident. Moreover, Ms. Howerter testified that following the July 13, 2000 accident claimant did not say she was restricted or having problems with her job. Ms. Howerter neither modified claimant's job duties nor noticed that claimant was exhibiting any pain before claimant's July 27, 2000 incident at home.

Claimant's present rendition of the facts is also contradicted by the initial history that Dr. Larry C. Atwood took from claimant at their July 31, 2000 visit. At that time, claimant advised the doctor that she was better the day after her July 13, 2000 fall and that she returned to work on July 17, 2000, and did well until the July 27, 2000 incident.

¹ P.H. Trans. (Nov. 8, 2000), Resp. Ex. 2.

When considering the July 31, 2000 incident report and the history that claimant initially gave Dr. Atwood, the Board is not persuaded that claimant had ongoing symptoms following the July 13, 2000 fall. Conversely, the Board finds that the history that claimant provided in the July 31, 2000 incident report is more likely than not the true history of claimant's symptoms. Accordingly, the Board finds that claimant's symptoms following the July 13, 2000 fall resolved and that claimant was able to return to work and perform her regular job duties until July 27, 2000, when she injured her back at home.

The greater weight of the medical evidence is that the July 27, 2000 incident is more likely responsible for claimant's present back problems and present impairment in the event the history that claimant provided in the July 31, 2000 incident report is accurate, which the Board has found above. Consequently, claimant's request for permanent partial general disability benefits, temporary total disability benefits and medical benefits for treatment rendered after July 27, 2000, should be denied.

AWARD

WHEREFORE, the Board modifies the December 11, 2002 Award and denies claimant's request for benefits as set forth above.

The Board adopts the order for payment of administrative expenses as set forth in the Award.

IT IS SO ORDERED.

Dated this ____ day of June 2003.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: William L. Phalen, Attorney for Claimant
Leigh C. Hudson, Attorney for Respondent and its Insurance Carrier
Jon L. Frobish, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director